Summary of Meeting #2 (8/12/2014)

Dr. Mona Gahunia, DHMH Chief Medical Officer, opened with a brief overview of the last workgroup meeting. Dr. Jayne Althaus of Johns Hopkins University School of Medicine amended the minutes from Meeting One to include that a recommendation by the group to maintain the status quo will result in a rise in neonatal and maternal morbidity and mortality, because individuals in the state are already struggling to access care. The remainder of the meeting consisted of presentations and discussion.

Birth Injury Fund Presentation

- Dr. Susan Dulkerian, Medical Director of Newborn Services, Mercy Medical Center began with a broad overview and presented on why Mercy and partners believe a birth injury fund could help sustain access to high-quality maternity care in Maryland.
- Ryan O'Doherty, Director of External Affairs, Mercy Health Services reviewed the key provisions of the Florida, Virginia, New York, laws/programs and 2014 Maryland legislative proposal and other supporting information.
- Mr. Tom Dame, a leading Maryland attorney with Gallagher, Evelius & Jones briefly highlighted some key legal issues that relate to the constitutionality the Birth Injury Funds and how the adjudication process works generally.
- National experts from both the Florida and Virginia Birth Injury Funds made brief remarks about their experiences.

Following the formal presentation (attached), the group engaged in a Q&A session with the national experts from Florida and Virginia. Questions and answers include:

- The biggest obstacles faced when starting the fund was the slow start up and the difficulty in determining expected claims per year. Florida and Virginia emphasized that this will be compounded by the fact that the Maryland proposal has a 21 year statute of limitation. They believe it will be difficult to determine the number of claims per year given the long statute of limitation. It also becomes more difficult to determine reimbursement for medical services provided prior to the claims submission;
- The need for policies and procedures in place, such as reporting to medical boards and formally monitoring board investigations, to appropriately manage physicians or hospitals with substandard care;
- The need to perform outreach during implementation and being ready to deal with negative press. Florida has a requirement that hospitals inform patients of the birth injury fund, and performs regular outreach to hospitals to make sure they follow this rule;
- The difference in participation requirements between Florida (mandatory for hospitals and optional for physicians) and Virginia (optional for hospitals and physicians), and the rise in the number of participants over time;
- Florida reported that 95% of OBGYNs participate in the program. Virginia reported that participation has gone up each year and has high participation. Virginia has

approximately 650 OBGYNs delivering 30 or more children year and there are approximately 700 participants in the program, including the four major hospital chains operating in the state.

- The annual savings in Florida for all physicians (between $1,200 and $1,800/physician/year) and OBGYNs in particular (between $62,000 and $82,000/physician/year);
- The recognition that Florida still has high medical malpractice insurance;
- The additional tort reforms the states have made since passing their birth injury funds (Florida implemented caps);
- The lack of retrospective analysis comparing the quality of care provided to children who received awards through the regular medical malpractice environment and those who were a part of the birth injury fund. However, Florida did provide information based on a survey that life expectancy calculations have been adjusted within the fund because recipients are living longer, likely due to the high quality of care they receive as a result of the fund. Florida also reported a shorter time for compensation and a high level of satisfaction from individuals participating in the program;
- The explanation of the nurse case manager's role and a brief discussion of dispute resolution through an administrative law judge; and
- The explanation of how the funds pay money (either to the providers or families).

In closing, Virginia recommended that legislation be as specific as possible, and Florida recommended that the fund's investments are managed correctly over time as pre-funding and maintenance are essential for the success of the fund.

DHMH Presentation

- Sara Cherico, DHMH Health Policy Analyst-Advanced, presented on other policy options found in the literature that relate to the liability environment. She referenced the article *Maternity Care and Liability: Most Promising Policy Strategies for Improvement* (attached) and *Maternity Care and Liability: Lease Promising Policy Strategies for Improvement* (attached).
- She also presented on policy options to improve access to maternity care that relates to physician workforce supply, such as conducting an in-depth analysis of the physician workforce, as was done in Massachusetts (found here), improving lifestyle factors for providers, and utilizing telehealth to provide care in rural areas.
- She concluded with a brief presentation of data from HRSA's Area Health Resource Files (attached).

The meeting concluded with a discussion that the liability environment is in need of greater reforms, and this is an option the workgroup may recommend the General Assembly study further.

Next Meeting (8/26/2014):

- DHMH will continue to collect workforce data and present any updated findings to the group.
- All workgroup members will come prepared with their recommendations for the final report.